

REMARKS

The Examiner provides a number of restrictions and rejections; we list them here in the order in which they are addressed.

I. Claims 6-10 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected group.

II. Claims 27-35 are rejected under 35 U.S.C. §102(b) as being anticipated by Warman et al., U.S. Patent 6,091,988.

III. Claims 27-35 are rejected under 35 U.S.C. §102(e) as being anticipated by Burnes et al., U.S. Patent Application Publication No. 2003/0204209.

I. Group II Claims 27-35 were elected with traverse.

The Examiner has treated the election of Group II claims 27-35 as an election without traverse, since the Applicants allegedly did not distinctly and specifically point out the supposed errors in the restriction. In the preceding Non-Final Office Action mailed 8/14/07, the Examiner acknowledges:

“During a telephone conversation with Thomas C. Howerton on Monday, August 06, 2007 a provisional election was made with traverse to prosecute the invention of Group II, claims 27-35.”

As directed by the Examiner, Applicants then affirmed this election in their arguments filed 11/16/07. Since the Examiner has previously acknowledged that the election was made with traverse, Applicants respectfully contend that it should remain so.

II. Claims 27-34 are not anticipated by either Warman et al. or Burnes et al.

In regards to Warman et al., the Examiner states that:

Warman discloses an implantable pacemaker, an implantable defibrillator element and a plurality of atrial and ventricular sensing/pacing/defibrillation leads/electrodes (e.g. Figures 1 and 2); configured to detect an earliest arriving electrical signal (e.g. column 8, lines 8-12). It is noted that the claim ONLY

states that the signals are “detected” and not processed to determine the earliest arriving electrical signals. In addition, both leads will “detect” the earliest arriving electrical signal when in the detection configuration; and generates ATP burst (e.g. col. 8, lines 54-66). Office Action pg 3 ¶2.

While in regards to Burnes et al., the Examiner further states that:

Burnes discloses an implantable pacemaker, an implantable defibrillator element and a plurality of atrial and ventricular sensing/pacing/defibrillation leads/electrodes (e.g. figures 1 and 2); configured to detect an earliest arriving electrical signal (e.g. para. 42, where it is the Examiner’s position that because continuous detection is being performed, the earliest arriving electrical signal is automatically detected); initiate an ATP burst and detect an earliest arriving electrical signal (e.g. figures 3-5); the pacemaker generating the ATP since the ATP is comprised of pacing pulses and since the elements that define the pacemaker and defibrillator have not been set forth in the claims;... Office Action pg 3 ¶3 to page 4 ¶1.

The Applicants disagree. Nonetheless, without acquiescing but to further prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 27 such that the previously recited implantable defibrillator element now further comprises “a timing device configured to determine if said earliest arriving electrical signal was detected by said atrial sensing lead or said ventricular sensing lead”. Support for these amendments may be found in the specification at, for example; page 11, lines 20-21; page 23, lines 4-7; and page 24 lines 4-8. Similarly, support for a “blanking period resulting from said (ATP) pacing burst”, may be found in the specification at, for example; page 6 line30 to page 7, line 1; page 11, lines 25-27; page 24, lines 4-8 and lines 27-28; and page 25, lines 1-3, lines 7-9 and lines 14-16.

Since neither Warman et al. nor Burnes et al. disclose an element to determine the location of the earliest arriving electrical signal, Applicants respectfully contend that claims 27-35 are not anticipated by either reference, and therefore both rejections should be withdrawn.

CONCLUSION

Based on the arguments provided above, Applicants believe that the Claims 27-35 are in condition for allowance. Should the Examiner believe a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned at 781.828.9870.

Respectfully submitted,

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